IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 125 OF 1991
WITH
CROSS OBJECTION ST.NO.8131 OF 1991

Sitaram Rau Surywanshi,
aged about 32 years,
Occ: Truck Business,
residing at Haripur,
Dist.Sangli. ... Appellant.

Versus.

1. Vasant Krishna Shinde,
2. Sou.Tarabai Vasant Shinde.
3. Smt.Laxmibai Deelip Shinde.
4. Amol Deelip Shinde.
   All residents of Danoli,
   Taluka: Shirol, Dist.
   Kolhapur.
5. United India Insurance Co. ... Respondents.

Shri R.V.More for the Appellant.
Shri T.S.Ingale for Respondent Nos.1 to 4.

FIRST APPEAL NO. 126 OF 1991
WITH
CROSS OBJECTION ST.NO. 8132 OF 1991

Sitaram Rao Suryavanshi. ... Appellant.

Versus.

1. Smt.Vimal Namdeo Deshmukh.
2. Kumar Namdeo Deshmukh.
3. Suresh Namdeo Deshmukh.
   All residing at Shirala,
   Dist.Sangli.
4. United India Insurance Co. ... Respondents.

Shri R.V.More for the Appellant.
Shri T.S.Ingale for the Respondent Nos.1 to 3.

FIRST APPEAL NO. 127 OF 1991
WITH
CROSS OBJECTION ST.NLO.12603 OF 1991

1. Uttam Mahadeo Gondhale,
   residing at Haripur Road,
   Sanghi.
2. Sitaram Rao Suryavanshi,
   residing at Haripur,
   Taluka Miraj, Dist.Sangli. ... Appellants.

Versus.

1. Smt.Rakhamabai Tukaram Solankar,
2. Vithal Tukaram Solankar.
3. Kum.Rajakka Tukaram Solankar.
4. Kum.Sajabai Tukaram Solankar.
5. Kum.Suvarna Tukaram Solankar.
6. Smt.Kashibai Dhulappa Solankar.
   all residing at Haripur, Taluka
   Miraj, Dist. Sangli.
7. United India Insurance Co.Ltd. ... Respondents.

Shri R.V.More for the Appellants.
Shri S.S.Pandit for Respondent Nos.1 to 6.

FIRST APPEAL NO. 128 OF 1991
WITH
CROSS OBJECTION ST.NO. 191 OF 1992

1. Uttam Mahadeo Gondhale,
   resident of Haripur, Taluka:
   Miraj, Dist.Sangli.

2. Sitaram Rau Suryawanshi,
   resident of Haripur, Taluka:
   Miraj, Dist.Sangli. ... Appellants.

Versus.

1. Smt.Mathabai Prabhjakar
   Shrimandilkar.
2. Prabhakar Rangrao Shrimandilkar.
   residents of Haripur, Taluka:
   Miraj, Dist. Sangli.
3. United India Insurance Co.Ltd. ... Respondents.

Shri R.V.More for the Appellants.
Shri S.S.Pandit for Respondent Nos.1 and 2.

AND

FIRST APPEAL NO. 129 OF 1991
WITH
CROSS OBJECTION ST.NO. 189 OF 1992.

1. Uttan Nagadei Gondhale,
   resident of Haripur, Taluka:
   Miraj, Dist. Sangli.

2. Sitaram Rao Suryavanshi,
   resident of Haripur,Taluka:
   Miraj, Dist. Sangli. ... Appellants.

Versus.

1. Dattatraya Prabhakar
   Shrimandilkar,
   R/o.Haripur, Taluka Miraj,
   Dist.Sangli.
2. United India Insurance Co.Ltd.
   Vakharbhag, Sangli. ... Respondents.

Shri R.V.More for the Appellants.
Shri S.S.Pandit for Respondent No.1.

CORAM : ABHAY S. OKA, J.

Date on which
argument concluded : 8th June, 2006.

Date on which
judgment pronounced : 7th July, 2006.

JUDGMENT.

1. These Appeals and Cross Objections can be disposed of by a common judgment as the same arise out

of a common judgment delivered by the learned Member of the Motor Accident Claims Tribunal at Sangli. By the impugned Judgment, seven claim petitions filed under section 110A of the Motor Vehicles Act, 1939 have been disposed of.

2. Shri Sitaram Suryavanshi is the sole Appellant in Appeals Nos.125 of 1991 and 126 of 1991 and is the Appellant No.2 in the other Appeals. He is the owner of the goods truck bearing MIT-1658. At the relevant time, one Shri Uttam Mahadeo Gondhale was employed as a driver by the said Sitaram. The said Uttam is the Appellant No.1 in Appeals Nos.127 of 1991, 128 of 1991 and 129 of 1991. On the relevant date, the truck was insured with the United India Insurance Co.Ltd. Prior to the accident, the truck was loaded with bricks at village Haripur. At that time of the accident the truck was proceeding towards Satara. When the truck came near Uranwadi, the front left wheel tyre of the truck suddenly burst. As a result, the driver lost control of the truck and the truck fell down in a ditch. There were about 15 persons excluding the driver and one Shri Gole sitting in the truck at the relevant time. The said persons were thrown away from the truck and were crushed under the pressure of the bricks which were

loaded in the truck. Four of them died on the spot and the others were injured. One of them died subsequently.

3. The First appeal No.125 of 1991 is filed by the owner of the truck Shri Sitaram for challenging the judgment and award passed in Claim Petition No.271 of 1985. The said claim petition was filed by the legal representatives of the deceased Dilip Shinde. The compensation awarded by the learned Member of the Tribunal in this case is Rs.70,000/- with interest at the rate of 12% per annum. There is a cross objection filed by the original Claimants seeking enhancement of the compensation. First Appeal No.126 of 1991 has been preferred by the owner of the truck Shri Sitaram for challenging the judgment and award made in Claim Petition No.2 of 1986 filed by the legal representatives of deceased Namdeo Deshmukh who died in the said accident. In this claim, compensation of Rs.58,000/- has been granted with interest at 12% per annum. In this Appeal also there is a cross objection filed by the Claimants for enhancement of compensation. First Appeal No.127 of 1991 is filed by the driver of the truck Shri Uttam and the owner Shri Sitaram challenging the

judgment and award made in Claim Petition No.65 of 1986. The said claim petition was filed by the legal representatives of the deceased Tukaram Solankar who died in the accident. In this claim a sum of Rs.53,200/- has been awarded by way of compensation with interest at 12% per annum. Again in this Appeal there is a cross objection filed by the original claimants. First Appeal No.128 of 1991 is preferred by the truck driver and the owner of the said truck for taking exception to the judgment and award passed in Claim Petition No.138 of 1986. The said Claim Petition was filed by the parents of one Damodar Shrimandilkar who died in the accident. The compensation of Rs.45,000/- has been awarded in this case with the interest at 12% per annum. The claimants in this case have filed a cross objection for enhancement of the compensation. First Appeal No..129 of 1991 is again filed by the driver and owner of the said truck for challenging the Judgment and Award in Claim Petition No.185 of 1986 filed by one Dattatraya Shrimandilkar who suffered injuries in the accident. He was awarded compensation of Rs.24,500/- with interest at 12% per annum. He has also claimed enhancement in compensation by preferring cross objection.

4. The case of the Claimants in these claim petitions was that the driver of the truck was driving the truck in rash and negligent manner and therefore, the accident has occurred. The owner and driver of the truck filed written statement. Their main contention is that the only cause of the accident was the sudden bursting of the front left side wheel tyre of the truck. In short their submission is that the accident was as a result of an act of God. According to them the deceased Damodar, deceased Dilip, deceased Tukaram and deceased Namdeo and the injured person Dattatraya were employed as coolies and at the relevant time they were assigned duties of unloading goods from the said truck. The injured person Dattatrya was also assigned the same duty. The United India Insurance Company Ltd. filed a written statement contending that the deceased persons and the injured persons were not at all working as coolies and a false stand has been taken by the owner of the truck only for the purpose of holding the insurance company liable to pay compensation. A contention was raised that the deceased and the injured persons were gratuitous passengers travelling for hire or reward.

5. The learned Member of the Tribunal by the impugned Judgment and Awards held that the accident

occurred due to the negligence on the part of the driver of the truck. The learned Member held that it was not established that the deceased persons and the injured were working as coolies with the owner of the truck. The learned Member of the Tribunal did not accept that the owner Shri Sitaram had sold the truck to one Tukaram Gore prior to 15th November 1985. The learned Member of the Tribunal proceeded to grant compensation by holding that the owner of the truck namely Sitaram Suryavanshi was liable to pay the compensation.

6. Shri More, the learned Counsel appearing for the Appellants in these Appeals submitted that there is a clear evidence on record to show that the deceased persons and the injured in these Apeals were employed as coolies and were accompanying the driver of the truck as coolies. He submitted that as per the policy of insurance, the insurance company was liable to satisfy the awards which were passed against the owner/insured. He submitted that the compensation awarded by the tribunal is exorbitant. He challenged the finding recorded on the issue of negligence. He submitted that the learned Member of the Tribunal has committed an error by applying higher multiplier in every case.

7. Shri Ingale, the learned Counsel appearing for the original Claimants in First Appeal Nos.125 of 1991 and 126 of 1991 submitted that as per the terms and conditions of the insurance policy, the insurance company was liable to satisfy the Award which is made against the owner of the truck. He submitted that the compensation granted by the Tribunal is on the lower side and therefore, cross objections have been filed by the original Claimants for seeking enhancement. He submitted that the cross objections deserve to be allowed. Shri S.S.Pandit the learned Counsel appearing for the original Claimants in First Appeal Nos.127 of 1991, 128 of 1991 and 129 of 1991 supported the submissions made by Shri Ingale appearing for the Appellants in the companion Appeals. He submitted that the cross-objections preferred by the Claimants in the said Appeals deserve to be allowed. None has appered for the Insurance Company though office noting in all the five Appeals shows that the company is duly served with the notice.

8. I have considered the submissions. Though Shri More made some submissions disputing the findings recorded by the learned Member of the Tribunal on the issue of negligence, I find that there is hardly any

substance in the said submissions. It will be necessary to refer to the evidence of the driver of the truck Shri Uttam which is recorded in Claim Petition No.271 of 1985. In paragraph 2 of his examination-in- chief, he has stated as under:

> "The tyre from the front of driver's side burst. As the tyre was burst it gave a dash to one person going by the road. That person had one headload. As the dash was given to the person the truck toppled down. The truck had gone ahead up to a distance of about 15 to 20 feet from the truck at where the tyre was burst. It toppled down on its driver's side."

In the cross-examination of the driver made by the learned Advocate appearing for the Insurance Company, he stated as under:

> "I had not instructed my advocate at the time of drafting of my W.S. that after the tyre was burst my truck gave a dash to the person going by the road with a headload."

In examination-in-chief the driver has stated that even

after the bursting of the tyre, the truck went ahead upto a distance of 15 to 20 feet from the spot from where the tyre was burst. According to him after the truck travelled upto 15 to 20 feet, the truck turned turtle on its driver's side. He has not stated that he made any efforts to control the truck after the tyre was burst. He has not stated that immediately after the tyre was burst he lost control over the truck. He himself stated that the truck went ahead upto a distance of 15 to 20 feet. There is nothing on record to show that any efforts were made by the driver to avoid the accident. The learned Member of the Tribunal has observed that the truck had remoulded tyres. The learned Member of the Tribunal has observed that the owner and the driver were not careful to ensure that the tyres were in roadworthy condition. Apart from the said observations it is very clear that the driver has not performed his obligation of making efforts to avoid the accident. The driver was aware that at that time 15 to 16 persons were sitting in the truck. Therefore, he ought to have been more careful and vigilant. As there is failure on his part to take care which he was under an obligation to do, inference of negligence on his part will have to be drawn. Thus no fault can be found with the finding recorded by the learned Member of the

Tribunal on issue No.1.

9. It is not in dispute that the truck was validly insured with the United India Insurance Company Ltd. for the period between 13th August 1985 and 12th August 1986. A xerox copy of the certificate of insurance was produced by the owner of the Truck in Claim Petition No.271 of 1985. The said xerox copy was produced along with a list at Exhibit 35. The Advocate who appeared for the Insurance Company has recorded his no objection on the said list. The xerox copy of the insurance policy has been admitted in evidence and marked as Exhibit 43. The said policy records that apart from the premium which is paid to cover the liability of public risk, a sum of Rs.48/- has been paid by the owner to the insurance company as an additional premium for covering the liability of six coolies. Thus if it is established that the deceased persons and the injured person were coolies, the Insurance Company will be liable to satisfy the awards which are made against the owner of the Truck. In the light of this position, the evidence on record will have to be appreciated.

10. The driver of the truck Shri Uttam Gondhale in his evidence recorded in Claim Petition No.271 of 1983

has stated that there were six labourers in the truck sitting on the bricks and the said labourers were taken for loading and unloading the bricks. In the cross-examiantion the driver has stated that in the statement before the Police he has stated that there were five labourers in the truck but he has not named the said labourers. Even the owner of the truck Shri Sitaram Suryavanshi in his deposition has stated that on the date of the accident the truck was loaded with bricks and there were labourers in the truck. The Claimants who were examined in the Claim Petitions which are the subject matter of these Appeals also deposed that the deceased persons were working as labourers in the truck. The Claimant in the Claim Petition No.185 of 1986 was injured in the accident. He has stated that he himself and his brother Damodar (deceased) were working as labourers and in capacity as labourers, they were travelling by the truck owned by Shri Sitaram Suryavanshi. He stated that there were four other labourers in the same truck. In my view there is sufficient evidence on record to show that the deceased persons were travelling in the truck as labourers at the relevant time. It is also established that even the Claimant Dattatraya in Claim Petition No. 185 of 1986 was also travelling as a coolie or a labourer. The

learned Member of the Tribunal has referred to the claim form submitted by the owner of the truck. The learned Member appears to have been impressed by the fact that in the claim form it is not disclosed that there were five to six labourers sitting in the truck. A Xerox copy of the claim form is on record at Exhibit 50. I have gone through the various items in the printed claim form. The said claim form does not specifically require the Claimant to mention whether there were any labourers travelling in the vehicle. Column No.9 in the said claim form has heading "witness". Item (a) in column No.9 provides for recording the names of the passengers and other witnesses. The driver of the truck in this case has kept the space against item (a) blank. Therefore, it is not the case where in the claim form the owner was required to disclose whether there were any labourers or coolies travelling in the truck at the time of the accident. The learned Judge has referred to the evidence of the owner of the truck and has stated that the owner has not deposed that he was maintaining a register which is required to be maintained under the Minimum Wages Act. A perusal of the cross-examination of the owner of the truck shows that no suggestion was given to the effect that the owner was not maintaining such register. In the cross-examination, the Insurance

company did not call upon the owner to produce the said register. It must be noted here that the driver of the truck has deposed that there were six labourers in the truck. From the cross examination of the driver it appears that before the Police the driver stated that at the relevant time there were five labourers sitting in the truck. Therefore, considering the evidence on record of the claims which are the subject matter of these appeals, it is obvious that the deceased/injured were travelling in the truck as coolies and therefore, the Insurance company will have to satisfy the claim made against the insured in these cases. As stated earlier, an additional premium covering the liability of six coolies has been paid by the owner.

11. This takes me to the question of quantum of compensation awarded by the Tribunal. In First Appeal No.125 of 1991 of which the subject matter is Claim Petition No.271 of 1985, the witness Tarabai who is the mother of the deceased has deposed that the deceased Dilip was working as a labourer. She has stated that the age of Dilip was 22 years at the time of the accident. She stated that her son was survived by a widow aged 20 years and a minor son aged 3 years. According to the said witness, the deceased was earning

Rs.800/- to Rs.900/- per month. In this claim the Tribunal has awarded compensation of Rs.70,000/- with interest at the rate of 12% per annum. The learned Member has taken the income of the deceased as Rs.10/- to Rs.12/- per day. The Claimants in these Appeals have given different figures of the wages earned by the coolies. There is a variance in the evidence of the Claimants as regards the exact daily wages received by the labourers. The figures vary between Rs.150/- per week to Rs.1100/- per month. While calculating compensation in a fatal accident case, there is bound to be some element of guess work. Considering the evidence of all the Claimants in these cases, I am of the view that a sum of Rs.450/- can be reasonably taken as monthly income of the coolies considering the rates of minimum wages payable under the statute at the relevant time. In case of Claim Petition No.271 of 1985, the age of the deceased is stated to be 22 years. In the case of Tamil Nadu State Transport Corporation Ltd. v/s. P.Rajapriya & others, reported in (2005) 6 S.C.C. page 236, the Apex Court has observed that the highest multiplier can be 18 which will apply to age group of 21 to 25 years when an ordinary Indian citizen starts independently earning. In the present case the age of the deceased was 22 years at the time of accident. The

age of the widow was 20 years and the age of the minor son was 3 years at the relevant time. Therefore, multiplier of 18 can be safely taken in this case. Out of Rs.450/- a sum of Rs.150/- being 1/3rd will have to be deducted on account of personal expenditure incurred by the deceased. Thus the multiplicand will be Rs.3600/- (Rs.30 x 12) and multiplier of 18 will have to be applied. Thus the compensation payable will be Rs.64,800/-.

12. In the case of Sarla Dixit and another v/s. Balwant Yadav reported in (1996) 3 SCC page 174 the Apex Court held that to the compensation fixed by a multiplier method, a conventional figure of Rs.15,000/- is required to be added on account of loss of estate and consortium etc. The Apex Court was dealing with the case of an accident which occurred in the year 1975. Considering the facts of the present case a conventional amount of Rs.15,000/- will have to be added. Thus the total compensation payable is Rs.79,800/- which can be rounded off to Rs.80,000/-. Thus in First Appeal No.125 of 1991, the cross objection will have to be partly allowed.

13. First Appeal No.126 of 1991 arises out of Claim

Petition No.2 of 1986 where the deceased is one Namdeo Deshmukh. The claim is made by his widow and two sons. One of the sons of the deceased was examined as a witness who stated that the age of the deceased was 40 years at the time of the accident. As in the earlier case, the multiplicand will be Rs.3600/- by taking the income of the deceased at Rs.450/- per month. Considering the fact that the age of the deceased was 40 years, a multiplier of 11 will have to be applied and thus the total compensation will be Rs.39,600/- to which a conventional figure of Rs.15,000/- will have to be added. In this case the Tribunal has awarded the compensation of Rs.58,000/-. Hence no modification is necessary as regards the quantum fixed by the Tribunal.

14. First Appeal No.127 of 1991 arises out of the Award passed in Claim Petition No.65 of 1986. The said claim petition was filed for claiming compensation on account of death of one Tukaram Solankar. The claim petition was filed by the widow of the deceased, four minor children of the deceased and the mother of the deceased. The widow of the deceased deposed before the Tribunal and stated that the age of the deceased at the time of accident was between 30 to 35 years. Taking

multiplicand of 3600, multiplier of 12 will have to be applied. The compensation amount thus comes to Rs.43,200/- to which conventional amount of Rs.15,000/- will have to be added. Thus the total amount comes to Rs.58,200/-. To this extent the cross objection filed by the claimants will have to be allowed.

15. First Appeal No.128 of 1991 arises out of claim petition No.138 of 1986. The said claim petition was filed by the parents of the deceased Damodar. In the said claim petition the learned Member of the Tribunal has awarded compensation of Rs.45,000/-. In a companion claim petition the Claimant Shri Dattatatraya, the brother of the deceased Namdeo has deposited on behalf of the Claimants. He has stated that the deceased Damodar was 25 years of age at the time of the accident. Considering the fact that the deceased Damodar was not married and the only dependants are his parents, multiplier of 15 has been applied by the Tribunal. By taking the multiplicand of 3600 the compensation comes to Rs.54,000/-. It is true that in a normal case the multiplier of 18 could have been applied. However, considering the respective ages of the parents of the deceased, no fault can be found if the multiplier of 15 was applied. Conventional amount of Rs.15,000/- will

have to be added. Thus the total compensation comes to Rs.69,000/- and to that extent the cross objection will have to be allowed.

16. First Appeal No.129 of 1991 arises out of a claim made by Shri Dattatraya who was injured in the accident. The income of the claimant will have to be taken as Rs.450/- per month. The learned Member of the Tribunal has awarded compensation of Rs.24,500/-. The learned Member has referred to the disability certificate at Ex.43 which records that the Claimant suffered 10% permanent partial disability. According to the case of the Claimant, he had spent a sum of Rs.3500/- for his medical treatment. Considering the injuries sustained by the Claimant and considering the fact that the Claimant required hospitalisation in a Civil Hospital for about one month and thereafter in a private hospital of Dr.Pawar for a period of three weeks, claim of Rs.3500/- on account of medical expenses was reasonable and the same deserves to be allowed. The age of the claimant at the time of accident was taken by the Tribunal as 20 years which is consistent with the evidence of the Claimant Dattatraya. In this case, the multiplicand of 3600 will have to be taken. The learned Member of the Tribunal has rightly applied multiplier of

25 in this case. Taking multiplier of 25 and multiplicand of Rs.3600 the total compensation comes to Rs.90,000/-. Ten percent of the said amount being Rs.9000/- will have to be awarded on account of loss of future income. The learned Member of the Tribunal has awarded a sum of Rs.10,000/- on account of mental pain and suffering. The amount appears to be reasonable. The learned Member has however awarded only a sum of Rs.1000/- on account of loss of income. The claimant has deposed that he had to undergo hospitalisation for about 7 weeks and thereafter he was required to take rest for two months during which period he was under medical treatment. Thus a sum of Rs.2000/- deserves to be awarded on account of loss of income. Thus the compensation of Rs.24,500/- awarded by the Tribunal is reasonable and proper.

17. Hence the Appeals and Cross Objections are disposed of by the following order:

. **F.A.No.125/91**

and

Cross Objection St.No.8131/1991.

i) The impugned Award is modified. The Claimants will be entitled to compensation of Rs.80,000/- instead of Rs.70,000/- awarded by the Tribunal. The Award passed in respect of proportionate costs and interest is maintained.

ii) It is directed that along with the owner of the truck, the United India Insurance Company Ltd. shall be jointly and severally liable to pay the compensation to the Claimants.

iii) If the owner of the truck has already paid or deposited any amount towards compensation and the if the said amount is already received by the Claimants, the owner of the truck will not be entitled to claim refund from the Claimants. However, he will be entitled to recover the said amount from the Insurance Company by filing appropriate proceedings.

iv) Accordingly the First Appeal and the Cross Objections are partly allowed in the above terms. There will be no order as to costs.

. **F.A.No.126 of 1991.**

and

Cross Objection St.No.8132 of 1991.

i) It is directed that along with the Owner of the Truck, the United India Insurance Company Ltd. will be jointly and severally liable to pay compensation awarded under the impugned Judgment and Award to the Claimants.

ii) The First Appeal is partly allowed in the above terms. There will be no order as to costs.

iii) Cross objection stands dismissed.

. **F.A.No.127 of 1991**

and

Cross Objection St.No.12603 of 1991.

i) The impugned Award is modified. The Claimants will be entitled to compensation of Rs.58,200/- instead of Rs.53,200/- awarded by the Tribunal. The Award passed in respect of proportionate costs and interest is maintained.

ii) It is directed that along with the owner of the truck, the United India Insurance Company Ltd. will be jointly and severally liable to pay the compensation to the Claimants.

iii) If the owner of the truck has already paid or deposited any amount towards compensation and the if the said amount is already received by the Claimants, the owner of the truck will not be entitled to claim refund from the Claimants. However, he will be entitled to recover the said amount from the Insurance

Company by filing appropriate proceedings.

iv) Accordingly the First Appeal and the Cross Objections are partly allowed in the above terms. No order as to costs.

. **F.A.No.128 of 1991**

and

Cross Objection St.No.191 of 1992.

i) The impugned Award is modified. The Claimants will be entitled to compensation of Rs.69,000/- instead of Rs.45,000/- awarded by the Tribunal. The Award passed in respect of proportionate costs and interest is maintained.

ii) It is directed that along with the owner of the truck, the United India Insurance Company Ltd. will be jointly and severally liable to pay the compensation to the Claimants.

iii) If the owner of the truck has already

paid or deposited any amount towards compensation and the if the said amount is already received by the Claimants, the owner of the truck will not be entitled to claim refund from the Claimants. However, he will be entitled to recover the said amount from the Insurance Company by filing appropriate proceedings.

iv) Accordingly the First Appeal and the Cross Objections are partly allowed in the above terms. No order as to costs.

. **F.A.No.129 of 1991**

and

Cross Objection St.No.189 of 1992.

i) It is directed that along with the Owner of the Truck, the United India Insurance Company Ltd. will be jointly and severally liable to pay compensation awarded under the impugned Judgment and Award to the Claimants.

ii) The First Appeal is partly allowed in the above terms. There will be no order as to costs.

iii) Cross objection stands dismissed.

Judge.